



September 9, 2002

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2002-5014

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168269.

The City of Houston (the “city”) received a request for all information on the requestor’s address, all complaints concerning the address, and all records on project 01129698. You state that you have released most of the requested information to the requestor, but claim that the name of the complainant, which you have highlighted, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by an attorney representing the requestor. *See* Gov’t Code § 552.304 (providing for submission of public comments).

We must first address the city’s admission that it did not comply with the requirements of section 552.301(d) of the Government Code. Section 552.301(d) provides as follows:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor’s written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). In this case, the city acknowledges that it did not provide to the requestor a written statement that the city wished to withhold the requested information from disclosure in accordance with section 552.301(d)(1). We note, moreover, that the city did not submit to this office a request for an open records ruling for the request until July 1, 2002. Therefore, the city failed to submit the request within the ten-business-day deadline as required by section 552.301. Thus, the city has failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have raised section 552.101 of the Government Code<sup>1</sup> in conjunction with the informer's privilege. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302. Furthermore, although you argue that the need to protect the complainant's safety and security constitutes a compelling reason to withhold the information, you have not demonstrated the existence of an imminent threat of physical harm to the complainant in this case. *See* Open Records Decision Nos. 169 (1977)(information protected by common-law right of privacy if disclosure presents imminent threat of physical danger), 123 (1976) (requiring governmental body to determine existence of special circumstances in establishing

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

privacy interest in public employee's home address). Nor have you otherwise shown a compelling reason to overcome the presumption of openness. Consequently, the city may not withhold the requested information under section 552.101. Accordingly, the city must release the highlighted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

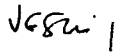
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 168269

Enc: Submitted documents

c: Mr. Charles Rice Young  
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(w/o enclosures)